

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Qwest Wireless, LLC and TW Wireless, LLC)	CC Docket No. 94-102
Petition for Extension of Time or Waiver of)	
Section 20.18 of the Rules)	

**JOINT COMMENTS OF
TELECOMMUNICATIONS FOR THE DEAF, INC.
AND THE NATIONAL ASSOCIATION OF THE DEAF**

On March 18, 2001, Qwest Wireless, LLC and TW Wireless (collectively, “Qwest”) filed a petition for an extension of time or waiver of Section 20.18 of the Commission’s rules to extend, for a portion of its network, its digital-TTY 911 deployment deadline until December 31, 2002.¹ On April 5, 2002, the Wireless Telecommunications Bureau issued a Public Notice seeking comments on Qwest’s Petition.² Telecommunications for the Deaf, Inc. (“TDI”) and National Association of the Deaf (“NAD”) (collectively, “Commenters”) hereby file these comments in opposition to Qwest’s Petition.

¹ Qwest Wireless, LLC and TW Wireless, LLC Petition for Extension of Time or Waiver of Section 20.18 of the Rules, CC Docket No. 94-102 (filed March 18, 2002) (*Qwest Petition*).

² Wireless Telecommunications Bureau Seeks Comment on Qwest Wireless Petition for Limited Waiver of Date by Which Digital Wireless Systems Must be Capable of Transmitting 911 Calls From TTY Devices, CC Docket No. 94-102, *Public Notice*, DA 02-768 (rel. April 5, 2002).

I. INTRODUCTION

A. Telecommunications for the Deaf, Inc.

TDI is a national advocacy organization actively engaged in representing the interests of the twenty-eight million Americans who are deaf, hard of hearing, late-deafened, and deaf-blind. TDI's mission is to promote equal access to broadband, media and telecommunications for the aforementioned constituency groups through consumer education and involvement, technical assistance and consulting, application of existing and emerging technologies, networking and collaboration, uniformity of standards, and national policy development and advocacy. By ensuring equal access for all Americans, society will benefit from the myriad skills and talents of persons with disabilities. Moreover, only through equal access will these twenty-eight million Americans be able to enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled, including critical access to enhanced 911 ("E911) emergency calling systems.

B. National Association of the Deaf

Established in 1880, the NAD is the nation's the oldest and largest consumer-based national advocacy organization safeguarding the civil and accessibility rights of deaf and hard of hearing individuals in the United States of America. Policy and legislative issues addressed by the NAD cover a broad range of areas, including education, employment, health care, human services, rehabilitation, telecommunications, and transportation. Primary areas of focus include grassroots advocacy and empowerment, captioned media, deafness-related information and publications, legal rights technical assistance, policy development and research, and youth leadership development. The NAD works closely with deafness related national organizations

and is a member of several coalitions representing the interests of deaf, hard of hearing, late deafened, and deaf-blind individuals.

In addition, NAD has an ad-hoc committee, the Telecommunication Advocacy Network (NAD-TAN), comprised by deaf and hard of hearing leaders from a wide range of professions nationwide. NAD-TAN members possess keen interest in and extensive knowledge with regard to telecommunications access issues faced on a daily basis by deaf and hard of hearing constituents. Further, the NAD-TAN team includes members who are affiliated with national and state associations or agencies that serve the needs of those individuals who are deaf, hard of hearing, and late-deafened.

II. COMMENTS

1. The Commission originally established October 1, 1997 as the deadline for covered wireless carriers to be capable of transmitting 911 calls from individuals with speech or hearing through use of TTY devices.³ The Commission subsequently suspended enforcement of the TTY requirement, in effect pushing back the compliance deadline numerous times.⁴ Almost two years ago, in May 2000, the WTB issued a Public Notice seeking comment on its tentative proposal to once again extend the deadline for implementation of a digital wireless TTY solution, to December 31, 2001. There, the WTB stated, “the revised deadline the Commission will adopt will be viewed very seriously,” and reminded carriers “the Commission will consider enforcement action, including

³ Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676 (1996) (*E911 First Report and Order*), recon., FCC 97-402, 12 FCC Rcd 22665 (1997) (*E911 Reconsideration Order*) (subsequent history omitted).

⁴ The Commission and the WTB suspended enforcement of the TTY requirement for digital systems until October 1, 1998, then through November 15, 1998, and again through December 31, 1998. See, respectively, *E911 Reconsideration Order*, 12 FCC Rcd 22695 (para. 59); Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, 13 FCC Rcd 21746 (para. 8) (1998); Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, 14 FCC Rcd 694 (para. 10) (1998).

forfeitures, should this obligation not be met.”⁵ The WTB also stated “[f]urther suspensions or waivers of the rule are not contemplated.”⁶ In that proceeding, the Commission established December 31, 2001 as the deadline for covered carriers to have obtained all software upgrades and equipment necessary to make their systems capable of transmitting 911 calls from TTY devices.⁷ However, in response to the request of wireless carrier comments stating that it would be infeasible to deploy and test the solution in their systems by this date, the Commission allowed carriers an additional six-month period (until June 30, 2002) “to integrate, test, and deploy the technology in their systems in conjunction with the public safety community.”⁸

2. In its *Fourth Report and Order* extending the compliance deadlines until December 31, 2001 (for procurement of software upgrades and equipment) and June 30, 2002 (for testing, integration and deployment), the Commission emphasized that it expects carriers “to devote the resources necessary to meet their compliance obligations.”⁹ The Commission also reiterated that “the industry has had a great deal of time to develop solutions for digital/TTY compatibility, and we

⁵ Wireless Telecommunications Bureau Seeks Comment on New Implementation Deadline for TTY Access to Digital Wireless Systems for 911 Calls, *Public Notice*, CC Docket No. 94-102, DA 00-1091 (rel. May 17, 2000) (*May 2000 Public Notice*) at p. 3. The WTB noted further that “[i]n the event that a waiver is requested before the new deadline, the requesting party will need to demonstrate what steps it has taken to begin implementing a solution, and explain, in detail, the exceptional circumstances that make it unable to begin complying within the time specified.” *Id.*

⁶ *Id.*

⁷ Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket 94-102, Fourth Report and Order, 15 FCC Rcd 25216, 25218 at para. 8 (2000) (*Fourth Report and Order*).

⁸ *Id.* Commenters note that Qwest Wireless in its Reply Comments filed July 18, 2000 advocated that the FCC decline to adopt any firm deadline at all, and argued that reporting requirements would be unnecessary. Qwest Reply Comments in CC Docket 94-102, at p. 5 (July 18, 2000).

⁹ *Id.* at para. 10.

believe the schedule we have set is reasonable and will ensure that TTY users on digital wireless systems will finally receive the benefits of E911 at the earliest possible time.”¹⁰

3. Less than three months from the June 30, 2002 compliance deadline (and four and a half years after the original deadline), the WTB seeks comments on Qwest’s petition for a waiver or yet an additional extension of time until December 31, 2002. The WTB in its *May 2000 Public Notice* stated that “[i]n the event that a waiver is requested before the new deadline, the requesting party will need to . . . explain, in detail, the exceptional circumstances that make it unable to begin complying within the time specified.”¹¹ The WTB also emphasized “[f]urther suspensions or waivers of the rule are not contemplated.”¹² As discussed herein, Commenters submit that Qwest has not shown “exceptional circumstances” meriting a waiver of the June 30, 2002 deadline.

4. Nor has Qwest shown that it meets the standards for a waiver set forth in 47 C.F.R. § 1.3 or 47 C.F.R. § 1.925(b)(3)(ii). Citing Section 1.925(b)(3)(ii) of the Rules, Qwest asserts that application of Section 20.18(c) to Qwest would be “inequitable, unduly burdensome, or contrary to the public interest,”¹³ and cites case law for the proposition that deviation from the rule in this case would “serve the public interest.”¹⁴ Commenters submit that quite the opposite is true: grant of the requested waiver would be contrary to the public interest, in that here, despite long delays, the affected public still will not have access to digital TTY solution for critical 911 service. In the *Fourth Report and Order*, the Commission stated that “[w]e are concerned that individuals using

¹⁰ *Id.*

¹¹ May 2000 Public Notice at p. 3.

¹² *Id.*

¹³ *Qwest Petition* at 5.

¹⁴ *Id.*

TTY devices are not only being forced to wait several years to obtain the benefits associated with being able to dial 911 using a digital wireless telephone, but they may also be in the position of having to pay higher service rates for the only type of service [analog] available to them in the meantime.”¹⁵ The Commission reiterated “by establishing a firm deadline for digital wireless service providers to comply with our TTY rule, we are attempting to resolve the disabilities groups’ underlying concerns by requiring carriers to achieve TTY/digital compatibility at the earliest possible date. This will ultimately ensure that TTY users will be able to choose among service and pricing plans, just as other consumers are able to do presently.”¹⁶ Grant of the requested waiver would be contrary to the public interest and contrary to the Commission’s stated goals for implementing TTY/digital compatibility at the earliest possible date.

5. Contrary to Qwest’s assertions, Qwest also has not established “unique or unusual factual circumstances,” or that application of Section 20.18(c) of the Rules to Qwest would be “inequitable” or “unduly burdensome” meriting grant of a waiver pursuant to Section 1.925(b)(3)(ii) of the rules. All covered carriers were required to obtain the necessary software upgrades and equipment by December 31, 2001, regardless of the carriers’ particular network configurations. Qwest should not be rewarded for its own delay, and/or lack of devotion of sufficient resources, and/or lack of sufficient effort to ensure delivery of the necessary software upgrade by the December 31, 2001 deadline.

6. Qwest and other covered wireless carriers have had ample time and opportunity to come up with TTY solutions in the interim since the original October 1, 1997 deadline, including

¹⁵ *Fourth Report and Order* at para. 28.

¹⁶ *Id.* at para. 29.

the opportunity to participate in the Wireless TTY Forum.¹⁷ Moreover, as clearly stated in the *Fourth Report and Order*, the Commission established December 31, 2001 as the deadline by which Qwest and other carriers were required to have obtained all software upgrades and equipment necessary to make their systems capable of transmitting 911 calls from TTY devices.¹⁸ Accordingly, Qwest had already missed a critical deadline (December 31, 2001), several months before it filed its waiver petition.¹⁹ If Qwest had procured the necessary software upgrades and equipment by December 31, 2001, then it would have had ample time to come into compliance with the requirements of Section 20.18(c) by June 30, 2002 deadline. Qwest should not now be permitted to argue that it has “no reasonable alternative” to come into compliance by June 30, 2002,²⁰ since Qwest has had a great deal of time and opportunity to find a TTY solution and/or alternatives since the issuance of the Commission’s Fourth Report and Order in December 2000.

7. In the *Fourth Report and Order*, the Commission stated that “[w]e expect carriers to comply with the rule’s requirements consistent with the schedule we prescribe in this order.”²¹ The Commission went on to emphasize that “[w]e are prepared to utilize the panoply of

¹⁷ Petitioners note that Qwest does not appear to have been actively involved in the TTY forum discussions. Petitioners submit that the carriers and manufacturers that have actively participated in the TTY forum have been able to accomplish a great deal to resolve TTY-over-wireless 911 solutions.

¹⁸ *Fourth Report and Order* at para. 8.

¹⁹ Qwest in its Petition states that Ericsson had informed Qwest that the software upgrade would not be generally available until February 2002, and that Ericsson subsequently pushed back the general availability date until May 28, 2002. Commenters submit that, even if Qwest had procured the software in February 2002, it would have already missed the December 31, 2001 deadline for obtaining the necessary software upgrade. Again, as stated in its *Fourth Report and Order*, the FCC established the December 31, 2001 deadline for obtaining software upgrades and equipment, but allowing an additional six-month period (until June 30, 2002) to integrate, test and deploy the technology. The rationale behind these deadlines was to ensure that compliance would be achieved as soon as possible, but no later than June 30, 2002, including ample time for obtaining software upgrades and for subsequent testing and integration. The FCC reiterated that “To the extent carriers are capable of implementing a solution before the deadline, we expect them to do so.” *Id.* at para. 8.

²⁰ See *Qwest Petition* at pp. 6-7.

²¹ *Fourth Report and Order* at para. 31.

enforcement mechanisms we have at our disposal to address noncompliance with the Communications Act and our rules to ensure that the purposes and goals of the Act, including sections 251(a)(2) and 255(b), as well as section 20.18(c) of our rules, are carried out. [citations omitted].”²²

8. Commenters submit that, particularly given the length of time that has elapsed since the original deadline, enforcement action will be the best tool to prompt timely compliance. Moreover, if the Commission were to grant the requested waiver, the Commission would signal to other carriers (including those that have incurred the effort and expense to ensure that their systems will be compliant by the June 30, 2002 deadline) that future deadlines (both in the 911 context and in general) are not really firm deadlines. This would give carriers the notion that they can push back compliance until the last possible moment, and then file a waiver petition pointing the blame at another entity (in this case, a software provider). By contrast, if the specter of enforcement action were a reality, such carriers would have the incentive to coordinate with any necessary third parties, such as software providers, early enough in advance to ensure compliance. For these reasons, and most importantly to give Qwest the incentive to come into compliance as soon as possible, the Commission should deny Qwest’s petition and specify that if Qwest is not in compliance by June 30, 2002, it will be subject to enforcement action.

9. Commenters strenuously oppose Qwest’s petition for a waiver. The affected public already has compromised substantially and has endured years of delay in implementation of TTY capability or 911 calls on digital wireless systems. If the Commission decides to grant Qwest’s petition in any respect, then Commenters request that the Commission grant only a much shorter extension of time (no more than two months, for example); otherwise Qwest would

²² *Id.*

have no incentive to comply as soon as possible. If the Commission grants a waiver/extension, (and Commenters strongly urge that the Commission not do so), it should also require Qwest to provide a weekly certified compliance status report, both to the Commission and to the TTY Forum, detailing their progress. The Commission also should require Qwest to fund consumer education programs with the involvement of consumer groups as a means of outreach to explain why some Qwest customers can use digital handsets with their TTY and others cannot. In addition, the Commission should establish that Qwest will be fined for every day of noncompliance with such conditions.

III. CONCLUSION

For the reasons stated herein, TDI and NAD respectfully request that the Commission deny Qwest's request for a waiver or extension of time to comply with the the requirements of Section 20.18(c) of the Rules.

Respectfully submitted,



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